IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 2194 of 2005

Between:

N. Hari Babu S/o N. Ramarao,
of EM-M&S Dept No. 336, R/o Tilaknagar, Nallakunta, Hyderabad

..... PETITIONER

AND

The Additional General Managar/HR &TA, Human Resources Management,
Bharat Heavy Electricals Limited, Ramachandrapuram, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring the orders of the respondent passed in Ref. No. HY/C2/1883615/94 dt 16-9-2004 as illegal, non-existent and unenforceable against the petitioner and further direct the respondent permit the petitioner to join duty as Artisan Gr. IV (Fitter)in the BHEL. Forthwith.

Counsel for the Petitioner: MR.NOUSHAD ALI

Counsel for the Respondent : MR.S.V.BHATT

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 2194 of 2005

O R D E R:

Challenging the order passed in Ref.No. HY/C2/1883615/94 dated 16.9.2004 as illegal and non-existent and unenforceable against the petitioner, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as Artisan Grade-IV (Fitter) in the Bharat Heavy Electricals Limited (BHEL), Ramachandrapuram, Hyderabad vide proceedings dated 4.5.1987 as an Ex-Apprentice based on last experience. Prior to the said appoint he was appointed as Fitter purely on temporary basis. It seems that the Senior Manager, BHEL, on the complaint said to have been made by the S.T. Association, BHEL, sent the caste certificate issued by the Dy. Collector, Warangal for verification. As the correctness of the said certificate was doubted without any reason, he was issued certificate dated 23.1.1998 by the Mandal Revenue Officer, Amberpet, which affirms that he belongs to Konda Kapu community. The said certificate appears to have been sent for verification. After enquiry, the Revenue Divisional Officer, Hyderabad Division sent a report confirming that the petitioner belongs to Konda Kapu community. Notwithstanding the enquiry, the District Level Scrutiny Committee without giving opportunity to produce his witnesses submitted a report to the District Collector. The District Collector passed the proceedings dated 1.9.2004 cancelling the caste certificate. There upon, the petitioner filed an appeal before the Government of Tribal Welfare Department on 13.9.2004 and he also filed a petition under Section 7(4) of the Act seeking for suspension of the orders of the District Collector, but no orders have been passed on the said application. Therefore, he filed W.P. 16849 of 2004 wherein this court directed the State Government to pass appropriate orders on the

suspension petition within two weeks from the date of receipt of the order. However, the Government rejected the petition vide orders dated 28.10.2004. Then he filed another Writ petition in W.P. 22756 of 2004 wherein this court passed orders setting aside the rejection order of the State Government dated 28.10.2004 and directing the State Government to dispose of the appeal within a period of four months from the date of receipt of a copy of the order. Since the relief granted in the writ petition did not benefit the petitioner, he filed writ appeal in W.A. 2189 of 2004 and this court disposed of the same by its order dated 30.12.2004 as follows:

> "Heard the learned counsel. As the order passed by the 2nd respondent is the subject matter of the statutory appeal, we are of the opinion that the order of the 2nd respondent impugned herein, shall not be given effect pending disposal of the appeal. In view of the same, the order of the 2nd respondent in Pro.No.D2/4273/2000 dated 1.8.2004 is suspended till the disposal of the statutory appeal pending before the 1st respondent. Accordingly, modifying the order of the learned single Judge to the extent as indicated above, this writ appeal is disposed of".

The grievance of the petitioner is that without waiting for the appeal time the respondent herein passed orders dismissing him from the service of the company based on the orders of the District Collector dated 1.9.2004. Since the order of the District Collector dated 1.9.2004 has been suspended in the writ appeal, the respondent herein ought to have withdrawn the said orders and allowed him to join the service. Hence the present writ petition.

A detailed counter affidavit has been filed by the respondent stating that during the departmental enquiry conducted by the respondent company against the petitioner, he has produced a copy of TC of his uncle Sri N. Ranga Rao wherein it was mentioned

against the caste column as Hindu, Konda Kapu. The petitioner did not produce any transfer certificate of his father to the respondent company. But on enquiry with CBI department, the respondent company got some records of Sri N. Rama Rao, father of the petitioner, wherein it is mentioned that he belongs to Hindu-Kapu only. Whereas in the PF nomination form which was declared by the petitioner's father it was mentioned that he does not belong to ST/SC. Therefore, the status of caste of the petitioner is doubtful. The District Collector vide letter dated 30.7.1995 informed that the petitioner does not belong to ST Konda Kapu and confirmed that he belongs to Kapu. That report is preceded thorough enquiry by the M.R.O. Eluru. Based on the report the respondent company requested the Collector, Eluru to cancel the caste certificate of the petitioner, but the Collector, Eluru stated that it would not be cancelled by him as it was issued by the office of Warangal. Then the respondent requested the Collector, Warangal to cancel the said certificate, who, vide letter dated 9.11.1996 confirmed that the Dy. Collector, Warangal issued the said certificate to the petitioner on his personal capacity based on the identification of Sri Sita Rama Murthy, Public Prosecutor and Dy. Legal Advisor of CBI, Hyderabad and the said certificate does not bear any office seal or the name of the office from where it is issued and hence the cancellation of the said certificate does not arise. Therefore, by its office order dated 28.1.1997 the name of the petitioner was deleted from the list of the Scheduled Tribe employees. Hence the respondent prays to dismiss the writ petition.

Learned counsel for the petitioner contended that the order passed by the District Collector dated 1.9.2004 is non-existent as on today in view of the orders passed by this court in W.A. 2189 of 2004 wherein a Division Bench of this court held that the order of the 2nd respondent impugned therein shall not be given effect pending disposal of the appeal and therefore the respondent is bound to await the result of the appeal pending before the Government and thereafter appropriate decision can be taken by the respondent and hence he prays to allow the writ petition.

On the other hand, learned standing counsel for the respondent contended that in the departmental enquiry it came to light that the petitioner produced a false and bogus certificate and therefore he was rightly removed from service. If ultimately the petitioner succeeds in the appeal before the Government, then he will be reinstated and therefore the order of removal is passed long prior to the orders passed by the Division Bench of this court and the order passed by the Division Bench shall come into effect only in future but not with regard to the orders that were already passed removing the petitioner from service. Hence there are no grounds to dismiss the writ petition.

The undisputed facts are that the petitioner joined the respondent-organisation on 4.5.1987 as Artisan Grade-IV against a post reserved for ST, by producing a Schedule Tribe certificate issued by the Dy. Collector, Warangal. A charge sheet dated 17.12.1996 was issued to the petitioner for making false statement in his application for appointment with regard to his caste. During the departmental enquiry the petitioner submitted a caste certificate issued by the M.R.O. Amberpet, Hyderabad stating that he belongs to Konda Kapu. That certificate was sent for verification to the District Collector, Hyderabad. The District Level Committee conducted enquiry and submitted a report to the District Collector and the District Collector vide proceedings dated 1.9.2000 cancelled the caste certificate issued by the M.R.O., Amberpet. That is the subject matter of the appeal which is admittedly pending before the Government. While filing the appeal the petitioner filed an interlocutory application to grant stay of all further proceedings but no stay was granted. There upon the petitioner filed a writ petition in W.P. 16849 of 2004 and this court passed orders on 20.9.2004 directing the State Government to pass appropriate orders on the suspension petition within two weeks from the date of receipt of a copy of the order. Thereafter, the Government rejected the stay petition as per the proceedings dated 28.10.2004. Then the petitioner filed W.P. 22756 of 2004 and this court passed orders dated 15.12.2004 directing the State

Government to dispose of the appeal within four months from the date of receipt of a copy of the order. Then the petitioner filed W.A. 2189 of 2004 wherein this court by its order dated 31.12.2004 passed the order suspending the order of the 2nd respondent dated 1.8.2004 till the disposal of the statutory appeal pending before the 1st respondent. The impugned proceedings dated 16.9.2004 has been passed by the respondent dismissing the petitioner from service with immediate effect. The Division Bench while passing the above order stated that the order of the District Collector shall not be given effect pending disposal of the appeal, because by the date of passing of the order the respondent has already taken a decision by order dated 16.9.2004 dismissing the petitioner from service. So, at the time of appointment in the year 1987 the petitioner claims that he belongs to S.T. category and basing on the certificate issued by the Dy. Collector, Warangal he was appointed. Later the said certificate issued by the Dy. Collector was sent for verification and the District Collector, Warangal vide his letter dated 9.11.1996 confirmed that the Dy. Collector, Warangal issued the said caste certificate to the petitioner in his personal capacity based on the identification of the Public Prosecutor and Dy. Legal Adviser of CBI, Hyderabad and that the said certificate does not bear any office seal or name of the office from where it is issued and hence the cancellation of the said certificate does not arise. When the caste certificate issued by the competent authority is not in accordance with law, the petitioner cannot claim for continuation in service in view of the fact that he was joined in the respondent-organisation against the post reserved for S.T. candidates by producing a Schedule Tribe caste certificate issued by the Dy. Collector, Warangal, which, according to the respondent, was issued in the personal capacity and it does not contain any seal of the office. During the course of departmental enquiry, the petitioner also brought another certificate issued by the M.R.O., Amberpet Mandal, Hyderabad which was also cancelled by the District Collector by his letter dated 1.9.2004. Though the subject matter of the proceedings of the District Collector dated 1.9.2004 is under consideration by the Government, but still the petitioner was

not appointed basing on the said certificate at the time of his joining on 4.5.1987. So, in my considered opinion, the ultimate decision that may be taken by the Government if any will not have any effect in the impugned order because as seen from the impugned proceedings the petitioner was joined in the respondent-organisation basing on the caste certificate issued by the Dy. Collector, Warangal. No doubt, the impugned order does not indicate that because the Dy. Collector in his personal capacity issued the caste certificate the petitioner is not entitled to continue in service, but a reading of the entire proceedings dated 16.9.2004 would clearly indicate that the Dy. Collector, Warangal in his personal capacity issued the caste certificate on which the petitioner joined in the respondent-organisation and therefore the cancellation of the said certificate does not arise as the certificate issued by the Dy. Collector in his personal capacity is not a certificate issued as per the rules. The petitioner is not entitled to continue in service. Since the cancellation of the caste certificate issued by the District Collector dated 1.9.2004 is not the certificate claiming appointment in the year 1987, the pendency of the proceedings before the Government is of no consequence.

Therefore, the impugned order does not suffer from any legal infirmities so as to call for interference by this court. The writ petition is totally devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: 25--02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Additional General Managar/HR &TA, Human Resources Management, Bharat Heavy Electricals Limited, Ramachandrapuram, Hyderabad

2. 2 CD copies